



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

April 23, 2002

Ms. Nancy Sweeney
U.S. Department of Agriculture
Animal and Plant Health Inspection Service
4700 River Road
Riverdale, Maryland 20737

Re: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Gypsy Moth Eradication Project (NMFS No. WSB-02-162).

Dear Ms. Sweeney:

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Endangered Species Act

National Marine Fisheries Service (NMFS) has reviewed the Biological Assessment (BA) and supporting documents provided for the above referenced project. We have considered and concur with the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA) determination of "may affect, not likely to adversely affect" Lower Columbia River Evolutionarily Significant Unit (ESU) chinook salmon (*Oncorhynchus tshawytscha*), the Lower Columbia River chum salmon (*O. keta*), the Lower Columbia River ESU steelhead (*O. mykiss*). The project will not result in the destruction or adverse modification of critical habitat for these species, nor significantly affect the Lower Columbia River coho salmon (*O. kisutch*), a candidate species. LCR chinook salmon were listed as threatened under the Endangered Species Act (ESA) on March 24, 1999 (64 Fed. Reg. 14308). LCR chum salmon were listed as threatened under the ESA on March 25, 1999 (64 Fed. Reg. 14508). LCR steelhead trout were listed as threatened under the ESA on March 19, 1998 (63 Fed. Reg. 13347). This consultation with USDA/APHIS is conducted under section 7 (a)(2) of the ESA, and its implementing regulations, 50 CFR Part 402.

The USDA/APHIS and the Washington State Department of Agriculture (WSDA) are working cooperatively to eradicate isolated infestations of the non-native gypsy moth, *Lymantria dispar* (Linnaeus), in King and Lewis Counties, Washington, in the spring of 2002. In King County, WSDA crews will implement a ground application method of treatment with *Bacillus thuringiensis* var. *kurstaki* (B.t.k.) on 16.5 acres in the Crown Hill neighborhood of Seattle. There are no creeks or other open bodies of water associated with this treatment zone.



At the Vader, Lewis County site, crews will implement an aerial application method of treatment of *B.t.k.* on 560 acres. The proposed project will involve three applications of *B.t.k.* applied aerially at a rate of 24 Billion International Units (BIU) per acre. The aerial applications will not include the use of additives (e.g., Plyac: a spreader-sticker). The aerial applications will be made 7 to 14 days apart and will occur between late-April and the end of June, depending on the weather. Exact timing of the applications will depend on the development of gypsy moth larvae and foliage as determined by WSDA.

To reduce the potential for drift, *B.t.k.* will only be applied when winds are below 10 miles per hour, temperatures are below 80° F, and relative humidity is above 50 percent. *B.t.k.* applications will be suspended if any of the above conditions are not met or rain is imminent. If rain occurs, *B.t.k.* applications will only begin when the target foliage has dried sufficiently and according to EPA label instructions.

Our concurrence is based on the information and conservation measures described in the BA, and additional information received for the project. This concludes informal consultation on this action in accordance with 50 CFR 402.14(b)(1). The USDA/APHIS must re-analyze this ESA consultation if: 1) new information reveals effects of the action that may affect listed species in a way not previously considered; 2) the action is modified in a manner that causes an effect to the listed species that was not previously considered; or 3) a new species is listed, or critical habitat is designated, that may be affected by the proposed action.

Essential Fish Habitat

Federal agencies are required, under §305(b)(2) of the MSA and its implementing regulations (50 CFR 600 Subpart K), to consult with NMFS regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA (§3) defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations (MSA §305(b)(4)(A)). This consultation is based, in part, on information provided by the Federal action agency and descriptions of EFH for Pacific salmon contained in Appendix A to Amendment 14 to the Pacific Coast Salmon Plan (August 1999) developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce (September 27, 2000).

The proposed action and action area are described in section 3 of the BA. The project area includes habitat which has been designated as EFH for various life stages chinook (*Oncorhynchus tshawytscha*) and coho (*O. kisutch*) salmon.

EFH Conservation Recommendations: Because the habitat requirements (*i.e.*, EFH) for the MSA-managed species in the project area are similar to that of the ESA-listed species, and because the conservation measures that the USDA/APHIS included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential

adverse effects to designated EFH, conservation recommendations pursuant to MSA (§305(b)(4)(A)) are not necessary. Since NMFS is not providing conservation recommendations at this time, no 30-day response from the USDA/APHIS is required (MSA §305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations, the USDA/APHIS will need to reinitiate EFH consultation with NMFS in accordance with NMFS implementing regulations for EFH at 50 CFR 600.920(k).

Should you have any questions concerning this informal consultation for ESA or EFH, please contact Laura Hamilton at (360) 753-5820 of the Washington Habitat Branch.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Robert Lohn", written in a cursive style.

D. Robert Lohn
Regional Administrator

cc: Barbara Chambers, USDA-APHIS-PPQ
Chad H. Phillips, WSDA